

By: Garcia

S.B. No. 1342

A BILL TO BE ENTITLED

AN ACT

relating to prohibited nonconsensual genital surgery on certain minors with intersex traits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 266.001 through 266.012, Family Code, are designated as Subchapter A, Chapter 266, Family Code, and a heading is added to Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; EDUCATIONAL SERVICES; MEDICAL CARE

SECTION 2. Chapter 266, Family Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. MEDICAL PROCEDURES AND TREATMENTS RELATED TO INTERSEX TRAITS

Sec. 266.051. DEFINITIONS. In this subchapter:

(1) "Intersex child" means an individual who is younger than 18 years of age and either:

(A) has inborn chromosomal, gonadal, genital, or endocrine characteristics, or a combination of those characteristics, that are not suited to the typical definition of male or female or are atypical for the sex assigned; or

(B) is considered by a medical professional to have inborn chromosomal, gonadal, genital, or endocrine characteristics that are ambiguous or atypical for the sex assigned.

1 (2) "Medical procedure or treatment related to an
2 intersex trait" includes genital surgery, gonadal surgery, or
3 hormonal treatment to treat or modify an intersex trait.

4 (3) "Medically necessary" means a medical procedure or
5 treatment immediately necessary to treat an injury, illness,
6 disease, or condition affecting the intersex child's health that if
7 delayed would adversely affect the intersex child's physical
8 health.

9 Sec. 266.052. REQUIREMENTS FOR CERTAIN MEDICAL PROCEDURES
10 OR TREATMENTS. A physician may not perform a medical procedure or
11 treatment related to an intersex trait on a foster child younger
12 than 12 years of age unless:

13 (1) the procedure or treatment is medically necessary
14 for the physical health of the child and the department consents to
15 the procedure or treatment; or

16 (2) the procedure or treatment is not medically
17 necessary for the physical health of the child and a court
18 authorizes the procedure or treatment as provided under this
19 subchapter.

20 Sec. 266.053. COURT APPROVAL OF CERTAIN MEDICAL PROCEDURES
21 OR TREATMENTS. (a) If the department or an intersex child's
22 physician wants the child to undergo a medical procedure or
23 treatment related to an intersex trait that is not medically
24 necessary for the physical health of the child, the department or
25 physician may file a petition with the court having continuing
26 jurisdiction over the intersex child seeking court approval of the
27 procedure or treatment.

1 (b) The court shall hold a hearing to determine whether the
2 proposed medical procedure or treatment related to an intersex
3 trait is in the child's best interest.

4 (c) The child must be represented by an attorney at the
5 hearing. The attorney for the child must:

6 (1) possess adequate knowledge of intersex traits, the
7 intersex population, and the range of medical procedures or
8 treatments that may be pursued in connection with the child's
9 intersex trait, including the option to delay any procedure or
10 treatment;

11 (2) communicate with the child, to the extent possible
12 given the child's age, regarding:

13 (A) the nature of the proposed medical procedure
14 or treatment;

15 (B) the extent to which the proposed medical
16 procedure or treatment is irreversible; and

17 (C) the projected outcome of, the possible risks
18 associated with, and the alternatives, including delay, to the
19 proposed medical procedure or treatment;

20 (3) interview the child, to the extent possible given
21 the child's age, to determine the child's wishes regarding the
22 pursuit or delay of any proposed medical procedure or treatment;

23 (4) assist the child, to the extent possible given the
24 child's age, in assessing the child's desires related to the child's
25 medical care and in communicating the child's desires to the court;
26 and

27 (5) for a child younger than 12 years of age, argue

1 against a proposed medical procedure or treatment that is not
2 medically necessary for the physical health of the child.

3 (d) Any party to the suit may submit to the court a report or
4 introduce evidence from a qualified expert on:

5 (1) intersex traits and the intersex population in
6 general;

7 (2) the child's specific intersex traits;

8 (3) the range of medical procedures and treatments
9 that may be pursued in connection with the child's intersex traits,
10 including delay;

11 (4) the specific medical procedure or treatment
12 proposed for the child, including the risks and anticipated
13 benefits associated with the procedure or treatment and the
14 possibility that the child's ultimate gender identity may differ
15 from the sex assigned;

16 (5) the extent to which the medical procedure or
17 treatment:

18 (A) is irreversible; and

19 (B) may safely be delayed until the child is of an
20 age to participate in the decision-making process;

21 (6) the physician's responsibilities to obtain
22 informed consent from the child and the child's parent or guardian
23 and whether those responsibilities have been adequately
24 discharged; and

25 (7) the public statements of intersex individuals or
26 patient advocates regarding Subdivisions (1)-(6).

27 (e) Following the hearing, the court shall determine

1 whether the proposed medical procedure or treatment related to an
2 intersex trait is in the child's best interest and render an order
3 with specific findings on:

4 (1) whether clear and convincing evidence establishes
5 that the short-term or long-term physical benefits of the proposed
6 medical procedure or treatment outweigh the short-term or long-term
7 physical risks;

8 (2) whether clear and convincing evidence establishes
9 that the short-term and long-term psychological benefits of the
10 proposed medical procedure or treatment outweigh the short-term or
11 long-term psychological risks;

12 (3) the extent to which the proposed medical procedure
13 or treatment would limit the child's future options for:

14 (A) fertility;

15 (B) development or construction of
16 female-typical characteristics;

17 (C) development or construction of male-typical
18 characteristics; and

19 (D) preservation of body characteristics
20 unaltered by decisions the child did not initiate; and

21 (4) whether clear and convincing evidence establishes
22 that any limitation identified under Subdivision (3) is justified
23 by an urgent need for the proposed medical procedure or treatment.

24 (f) If the requirements of Sections 266.054(1) and (2) are
25 satisfied, the court may consider the child's consent to the
26 proposed medical procedure or treatment related to an intersex
27 trait as clear and convincing evidence for purposes of the court's

1 best-interest determination under Subsection (e).

2 Sec. 266.054. FOSTER CHILD'S CONSENT TO MEDICAL PROCEDURE
3 OR TREATMENT. Notwithstanding Section 32.003 or 266.004 or other
4 law, a foster child 12 years of age or older may consent to a medical
5 procedure or treatment related to an intersex trait if the child:

6 (1) has been evaluated by a physician and a
7 psychologist, both of whom have had previous experience treating
8 patients with intersex traits, and the physician and psychologist
9 determine the child has the maturity necessary to make decisions
10 regarding the child's medical care; and

11 (2) has been provided with the information necessary
12 to enable the child to provide voluntary and informed consent to the
13 proposed medical procedure or treatment, including:

14 (A) the nature of the proposed medical procedure
15 or treatment, including whether and to what extent the proposed
16 procedure or treatment is irreversible;

17 (B) the projected outcome of the proposed medical
18 procedure or treatment, including whether the benefits of the
19 procedure or treatment are medical, psychological, or social, and
20 the strength of the evidence supporting the claims that the
21 procedure or treatment provides each of those benefits;

22 (C) the possible risks associated with the
23 proposed medical procedure or treatment, including, as applicable,
24 loss of reproductive capacity, loss of sexual function or
25 sensation, and the child's ultimate gender identity differing from
26 the sex assigned; and

27 (D) the alternatives to the proposed medical

1 procedure or treatment, including delaying the procedure or
2 treatment.

3 SECTION 3. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2017.